CONFLICT OF LAWS — CAPACITY TO CONTRACT — ENFORCEMENT OF FOREIGN CONTRACTS AGAINST THE PUBLIC POLICY OF THE FORUM. — A married woman domiciled in Texas, by whose laws she was incapable of making a valid contract of suretyship, made such a contract in Illinois where a married woman has such capacity. She was sued in the District Court of the United States for the Northern District of Texas. *Held*, that she is not liable. *Union Trust Co.* v. *Grosman*, U. S. Sup. Ct. Off., Oct. Term, 1917, No. 106.

The authorities are in confusion as to what law governs the validity of a contract. One line of cases takes the view that the law of the place of performance governs. *Pritchard* v. *Norton*, 106 U. S. 124. Another view is that the law of that place governs which the parties intend shall govern. *Gibson* v. *Connecticut Fire Ins. Co.*, 77 Fed. 561. A third line of cases holds that the law of the place of making the contract governs. *Garrigue* v. *Keller*, 164 Ind. 676, 74 N. E. 523. Much is to be said for the view that the validity of a contract is to be governed by the *lex loci contractus*. See J. H. Beale, "What Law Governs the Validity of Contracts?" 23 HARV. L. REV. 1. Additional confusion appears in the authorities when the question of capacity to make a contract arises. One line of authorities holds that the law of the place where the contract is made determines the capacity of the parties. *Milliken* v. *Pratt*, 125 Mass. 374. See STORY, CONFLICT OF LAWS, 8 ed., §§ 102, 102 *a*, 102 *b*. Another takes the view that the domicile of the parties determines their capacity to contract. *In re Cooke's Trusts*, 56 L. J. Ch. 637. See DICEY, CONFLICT OF LAWS, Rule 146. The principal case adopts none of the above views, but proceeds upon the basis that though the contract might have been valid if sued upon elsewhere, it was unenforceable in Texas because against public policy. The question of whether the contract of a married woman is against the public policy of a state is one upon which judges may differ. *Cf. Garrigue* v. *Keller*, *supra; Bank* v. *Shaw*, 109 Tenn. 237, 70 S. W. 807.

CONTRACTS — DEFENSES — "RESTRAINT OF PRINCES" IN CHARTERPARTIES. — Residents of Sweden, owners of a Swedish vessel, entered into an English charterparty by which the vessel was to make certain voyages subsequently prohibited by Swedish emergency legislation. The ship was at an English port. The charterparty contained the usual exception as to restraints of princes. The plaintiff brought an action to restrain the use of the vessel except in accordance with the contract. *Held*, that it is enough that the Swedish government is capable of enforcing the restraint upon the persons having the custody of the ship, and that the prohibition operates as a restraint of princes. *Furness, Withy & Co.* v. *Rederiaktiegolabet Banco*, [1917] 2 K. B. 873.

This decision depends wholly upon the significance of the common phrase, "restraints of princes." See DUCKWORTH, CHARTERPARTIES AND BILLS OF LADING, 2 ed., 136. Mere illegality by foreign law does not excuse performance of a contract, unless by rendering performance impossible it may be brought within an express or implied condition. *Tweedie Trading Co.* v. *McDonald Co.*, 114 Fed. 985. See STEPHENS, CHARTERPARTIES, 145. See also 15 HARV. L. REV. 63; 18 *Ibid.*, 384. "Restraint of princes" is to be understood in its natural and ordinary meaning. Statements that restraints must be actual and operative, and not merely expected and contingent, must be read in connection with the special facts of the particular case. *Cf. Richardson* v. *Maine Ins. Co.*, 6 Mass. 102, 120. But see LEGGETT, CHARTERPARTIES, 2 ed., 341. The exception should not be confined to restraint of the vessel itself; indeed the term "restraint" seems more applicable to persons than to things. Restraints, of course, commonly arise from the interference of a sovereign with the dominion over the vessel itself, as by blockade, embargo, or quarantine. *Aubert* v. *Gray*, 3 B. & S. 163; *Geipel* v. *Smith*, L. R. 7 Q. B. 404. See *Olivera* v. *Un. Ins. Co.*, 3 Wheat. (U. S.) 183, 194. The exception does

not apply to detention as a result of ordinary legal proceedings, nor to restraints by persons acting in defiance of law. *Finlay* v. *Liverpool, etc. Co.*, 23 L. T. R. 251; *Nesbitt* v. *Lushington*, 4 T. R. 783. See *Northern Pacific Ry. Co.* v. *Am. Trading Co.*, 195 U. S. 439, 468. The principal case probably extends the meaning of "restraints of princes," but the decision is not without the support of well-considered *dicta*. See *Sanday & Co.* v. *British, etc. Marine Ins. Co.* [1915] 2 K. B. 781, 800, 827; *Nobel's Explosives Co.* v. *Jenkins & Co.* [1896] 2 Q. B. 326, 331; *Rodoconachi* v. *Elliott*, L. R. 9 C. P. 518, 522. But see *Bradlie* v. *Maryland Ins. Co.*, 12 Pet. (U. S.) 378, 402; *Miller* v. *Law Accident Ins. Co.* [1903] 1 K. B. 712, 721. See also SCRUTTON, CHARTERPARTIES AND BILLS OF LADING, 7 ed., 207

DEATH BY WRONGFUL ACT — STATUTORY LIABILITY IN GENERAL — LIABILITY FOR FAILURE TO PERFORM A CONTRACT TO HEAT PREMISES. — The defendant, as part of his contract with a tenant, agreed to keep the premises heated. He failed to do so, and the tenant contracted a severe cold which, it is alleged, later resulted in his death. A statute allows an action for the benefit of the next of kin of a deceased person whose death was caused by the wrongful acts or omissions of another (1913 MINN. GEN. STAT. § 8175). *Held*, that the plaintiff may recover. *Keiper* v. *Anderson*, 165 N. W. 237 (Minn.).

Tort will lie for negligent misfeasance in the performance of a thing agreed upon. *Flint Mfg. Co.* v. *Beckett*, 167 Ind. 491, 79 N. E. 503; *Stock* v. *Boston*, 149 Mass. 410, 21 N. E. 871. Generally it will not lie for negligent nonfeasance in the performance of a contract. *Samuel* v. *Novak*, 99 Md. 558, 58 Atl. 19; *Shick* v. *Fleischhauer*, 26 App. Div. (N. Y.) 210. Here it might be argued that the defendant's only breach was a failure to act. But the essence of the transaction was that the defendant undertook to keep his tenant warm, and so negligently performed his agreement that injury resulted. Bearing out this view is a previous Minnesota case that is very much in point. *Glidden* v. *Goodfellow*, 124 Minn. 101, 144 N. W. 428. It would seem to follow that plaintiff may recover, for although the act seems clearly to be a "death" statute, and not a "survival" statute, the court construes it as the latter. See 15 HARV. L. REV. 854; 30 HARV. L. REV. 396. But even under a death statute, plaintiff should recover, provided the element of damage is present. Under such statutes, the cause of action arises from a tort to the plaintiffs. See 15 HARV. L. REV. 854. The principal case would satisfy that requirement; it is well settled that a wrong to one person may arise out of breach of a contract with another. *Cf. Rex* v. *Pittwood*, 19 Times L. Rep. 37. Under a death statute, it is immaterial whether the deceased would have had a cause of action had he survived.

EMINENT DOMAIN — RIGHT TO ABANDON PROCEEDINGS. — A water company instituted proceedings to condemn land, and, after damages had been assessed and the assessment confirmed, attempted to abandon the proceedings. *Held*, that the company cannot withdraw. *York Shore Water Co.* v. *Cord*, 102 Atl. 321 (Me.).

For a discussion of this case, see Notes, page 791.

EVIDENCE — GENERAL PRINCIPLES AND RULES OF EXCLUSION — ADMISSIBILITY OF TELEPHONE CONVERSATIONS. — The bailee of a horse, in attempting to establish that the owner had been notified before the expense was incurred, offered the veterinary as a witness to testify to a conversation by telephone with one whose voice the witness did not recognize but who said he was the servant of the owner. *Held*, that the alleged conversation was not admissible. *Smarak* v. *Segusse*, 102 Atl. 354 (N. J.).

For a discussion of this case, see Notes, page 794.